

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Developing a Unified Intercarrier Compensation Regime |) | CC Docket No. 01-92 |
| |) | |
| T-Mobile <i>et al.</i> Petition for Declaratory Ruling |) | |
| Regarding Incumbent LEC Wireless Termination Tariffs |) | |
| |) | |

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ T-Mobile USA, Inc. (“T-Mobile”) submits this reply to the oppositions filed by CenturyTel, Inc. (“CenturyTel”), the National Telecommunications Cooperative Association (“NTCA”), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) to T-Mobile’s petition for clarification or reconsideration (“Petition”) of the *WTT Order*.² CenturyTel and NTCA/OPASTCO offer no valid legal or policy support for their opposition to T-Mobile’s request for clarification that Section 51.705 of the Commission’s rules applied to wireless termination tariffs unilaterally imposed by incumbent local exchange carriers (“LECs”) upon commercial mobile radio service (“CMRS”) providers prior to the effective date of the *WTT Order*. Accordingly, the Commission

¹ 47 C.F.R. § 1.429. All petitions for reconsideration or clarification, oppositions, and comments filed on or before June 30, 2005, in this proceeding hereinafter will be short-cited.

² See *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4855 (2005) (“*WTT Order*”).

should reject CenturyTel's and NTCA/OPASTCO's oppositions and grant the Petition in its entirety.

As an initial matter, T-Mobile's assertion that the Commission has authority to impose interim pricing rules on CMRS-LEC traffic is unopposed and, in fact, received broad support from a number of parties, including CenturyTel, Verizon Wireless, Nextel Partners, and Leap Wireless.³ These parties agree that the Commission properly applied the interim pricing rules of Sections 51.715 and 51.707 to CMRS-LEC traffic during the period when negotiations for reciprocal compensation arrangements are pending.⁴

Only CenturyTel and NTCA/OPASTCO oppose T-Mobile's request for clarification regarding the applicability of Section 51.705 to wireless termination tariffs for past periods. Specifically, these parties adopt the indefensible position that wireless termination tariffs should not be subject to *any* pricing standard and thus can never be challenged as applied to past periods, regardless of the reasonableness of the tariffed rates.⁵ These parties ignore the critical difference, well-established by both FCC and judicial precedent, between a tariff that has been legally filed and a tariff that sets unreasonable and therefore unlawful rates.

As T-Mobile noted in its petition, the Commission held that "a tariffed arrangement would not be unlawful *per se* under the current rules," but expressly declined to make any "findings regarding specific obligations of any customer of any carrier to pay any tariffed

³ See CenturyTel Opposition at 10; Verizon Wireless Comments at 6-8; Nextel Partners Comments and Opposition at 12; Leap Wireless Comments at 4.

⁴ *Id.*

⁵ See CenturyTel Opposition at 10-12; NTCA/OPASTCO Opposition at 3-4.

charges.”⁶ Contrary to CenturyTel’s claim, the Commission did *not* determine that “wireless termination tariffs for past periods should be enforced according to their terms.”⁷ Rather, it merely found that, under prior FCC rules, “incumbent LECs were not prohibited from filing state termination tariffs.”⁸ Although the Commission stated that “CMRS providers were obligated to accept the terms of applicable state tariffs,”⁹ it did not uphold the validity of all tariffed rates regardless of their reasonableness or suggest that CMRS providers could not challenge the lawfulness of tariffed rates. Like any other purchaser of telecommunications services, CMRS providers may be “obligated to accept the terms” of a legally filed tariff, but this acceptance does not prevent them from challenging the lawfulness of the tariffed rates and obtaining reparations. In fact, it is well-settled that “legally effective, carrier-initiated tariffs can *always be challenged as unreasonable and unlawful*.”¹⁰ The purchaser of a tariffed service may be “bound to pay the legal rate; but if he could show that it was unreasonable he might recover reparation.”¹¹ Thus, both the Commission and the courts have recognized that a tariff may be legally effective, but nonetheless is unlawful if it specifies unreasonable rates.¹²

Consequently, even though the Commission found that its prior rules did not preclude wireless termination tariffs, these tariffs must comply with the pricing standards set forth in the Communications Act of 1934, as amended (“Communications Act”), and the Commission’s

⁶ See T-Mobile Petition at 8-9 (quoting *WTT Order*, ¶ 10 n.40).

⁷ CenturyTel Opposition at 10.

⁸ See *WTT Order*, ¶ 9.

⁹ *Id.*

¹⁰ *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, 5 FCC Rcd 216, ¶ 48 (1990) (emphasis added), *aff’d sub. nom.*, *MCI v. FCC*, 59 F.3d 1407 (D.C. Cir. 1995).

¹¹ *Id.* (quoting *Arizona Grocery v. Atchison, T. & S. F. R. Co.*, 284 U.S. 370, 384 (1932)).

¹² *Id.*

rules. Specifically, Section 201(b) of the Communications Act requires “just and reasonable” rates, and Section 252(d)(2) requires that reciprocal compensation rates be based on “a reasonable approximation of the additional costs of terminating such calls.”¹³ In implementing Section 251 and 252, the Commission adopted pricing rules based upon “forward-looking” costs, and these rules have been affirmed on appeal.¹⁴ Notably, Section 51.705 provides specific standards for setting an incumbent LEC’s transport and termination rates.¹⁵

The pricing requirements of Sections 201(b) and 252(d)(2) of the Communications Act, as well as Section 51.705 of the Commission’s rules, fully apply to an incumbent LEC’s transport and termination rates, regardless of the mechanism used to set those rates (*i.e.*, pursuant to a tariff or a negotiated or arbitrated agreement).¹⁶ Thus, for example, in *TSR Wireless*, the Commission rejected the argument that the reciprocal compensation obligation under Section 251(b)(5) of the Communications Act and the Commission’s implementing rules applies only within the context of interconnection agreements negotiated or arbitrated pursuant to Section 252 procedures. Specifically, the Commission found that the *Local Competition Order*, which adopted Section 51.703(b) of the Commission’s rules, “does not require a section 252 agreement before imposing such an obligation on the LEC.”¹⁷ The Commission further held that “any LEC efforts to continue charging CMRS or other carriers for delivery of such traffic would be unjust

¹³ 47 U.S.C. §§ 201(b), 252(d)(2).

¹⁴ *See Verizon Communications v. FCC*, 535 U.S. 467 (2002).

¹⁵ 47 C.F.R. § 51.705.

¹⁶ *See TSR Wireless v. US West*, 15 FCC Rcd 11166 (2000), *aff’d sub nom.*, *Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

¹⁷ *Id.* ¶ 29 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (“*Local Competition Order*”)).

and unreasonable and violate the Commission's rules, *regardless of whether the charges were contained in a federal or a state tariff.*"¹⁸

Contrary to CenturyTel's contention,¹⁹ *TSR Wireless* dictates a similar result in this case. Here, Section 51.705(a) expressly requires that "[a]n incumbent LEC's rates for transport and termination of telecommunications traffic shall be established" on the basis of (1) forward-looking economic costs, (2) Section 51.707's default proxies, or (3) bill-and-keep.²⁰ Moreover, contrary to NTCA/OPASTCO's argument,²¹ neither the plain language of the rule nor the *Local Competition Order* adopting the rule requires that the pricing standards set forth in Section 51.705(a) apply only to reciprocal compensation or interconnection agreements.²² Because the Commission's authority to adopt Section 51.705(a), as applied to CMRS-LEC traffic, arises under Sections 332 and 201 of the Communications Act, Section 51.705(a) is enforceable outside the context of a Section 252 interconnection agreement, *i.e.*, a tariffed arrangement.²³

Furthermore, failure to apply the pricing requirements of Section 51.705(a) to wireless termination tariffs could result in a grossly inequitable situation that would allow an incumbent LEC to extract excessive termination rates from a CMRS provider, but prevent the CMRS provider from obtaining symmetrical reciprocal compensation from the incumbent LEC, in

¹⁸ *Id.* (emphasis added).

¹⁹ See CenturyTel Opposition at 11.

²⁰ 47 C.F.R. § 51.705(a).

²¹ See NTCA/OPASTCO Opposition at 3-4.

²² *Id.*; *Local Competition Order*, ¶¶ 1054-64.

²³ *Qwest v. FCC*, 252 F.3d 462, 463-65 (D.C. Cir. 2001).

violation of Section 51.711(a) of the Commission's rules.²⁴ In the *WTT Order*, the Commission found that wireless termination tariffs "do not prevent CMRS providers from requesting reciprocal or mutual compensation at the rates required by the Commission's rules."²⁵ The Commission noted, however, that the reciprocal compensation that CMRS providers could seek from incumbent LECs would be limited by Section 51.705, which imposes pricing standards, and by Section 20.11, which requires "reasonable compensation."²⁶ Absent the application of the same pricing requirements to an incumbent LEC's tariffed rates, CMRS providers would be unable to collect symmetrical rates from the incumbent LEC, as required by Section 51.711(a). The Commission certainly did not contemplate this anomalous result when it allowed wireless terminations tariffs to apply for past periods.

Based upon the foregoing, T-Mobile urges the Commission to reject CenturyTel's and NTCA/OPASTCO's oppositions and to grant the Petition in its entirety.

²⁴ Section 51.711(a) generally provides that "[r]ates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section." 47 C.F.R. § 51.711(a).

²⁵ *WTT Order*, ¶ 12.

²⁶ *Id.* ¶ 12 n.48.

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I, Theresa Rollins, do hereby certify that on July 11, 2005, a copy of the foregoing **REPLY** was served by U.S. mail, postage prepaid, or by electronic mail, as indicated:

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